

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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ISIAH O. SMITH,

Petitioner,

v.

Case No. 18-cv-666-pp

REED RICHARDSON,

Respondent.

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**ORDER SCREENING HABEAS PETITION (DKT. NO. 1) AND REQUIRING  
RESPONDENT TO FILE ANSWER OR RESPONSIVE PLEADING**

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On April 27, 2018, the petitioner, representing himself, filed a petition for writ of *habeas corpus* under 28 U.S.C. §2254, challenging his October 29, 2018 Milwaukee County Circuit Court judgment of conviction for second degree reckless homicide as party to a crime. Dkt. No. 1. He has paid the \$5.00 filing fee. This order screens the petition under Rule 4 of the Rules Governing Section 2254 Cases. Because it does not plainly appear from the face of the petition that the petitioner is not entitled to relief, the court will order the respondent to answer or otherwise respond.

**I. Background**

On October 29, 2018, a jury convicted the petitioner of second-degree reckless homicide as party to a crime, and the court sentenced him to serve to fifteen years' initial confinement followed by ten years of extended supervision. Dkt. No. 1 at 2. On August 10, 2015, the petitioner filed a direct appeal of his conviction; the Wisconsin Court of Appeals affirmed the judgment of conviction on November 15, 2016. Id. at 3. One month later, the petitioner filed a petition for review with the Supreme Court of Wisconsin. Id. The Supreme Court denied

the petition for review on February 13, 2017. Dkt. No. 1-2. The petitioner filed the federal petition for *habeas corpus* relief on April 27 2018. Dkt. No. 1.

## **II. Rule 4 Screening**

### A. Standard

Rule 4 of the Rules Governing §2254 Proceedings provides:

If it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify the petitioner. If the petition is not dismissed, the judge must order the respondent to file an answer, motion or other response within a fixed time, or to take other action the judge may order.

A court allows a *habeas* petition to proceed unless it is clear that the petitioner is not entitled to relief in the district court. At the screening stage, the court expresses no view of the merits of any of the petitioner's claims. Rather, the court reviews the petition and exhibits to determine whether the petitioner alleges he is in custody in violation of the "Constitution or laws or treaties of the United States." 28 U.S.C. §2254(a). If the state court denied the petition on the merits, this court can grant the petition only if the petitioner is in custody as a result of: (1) "a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the United States Supreme Court;" or (2) "a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding." 28 U.S.C. §2254(d).

The court also considers whether the petitioner filed within the limitations period, exhausted his state court remedies and avoided procedural default. Generally, a state prisoner must file his *habeas* petition within one year of the judgment becoming final. 28 U.S.C. §2254(d)(1)(A). In addition, the state prisoner must exhaust the remedies available in the state courts before

the district court may consider the merits of his federal petition. 28 U.S.C. §2254(b)(1)(A). If the district court discovers that the petitioner has included an unexhausted claim, the petitioner either must return to state court to exhaust the claim or amend his petition to present only the exhausted claims. Rose v. Lundy, 455 U.S. 509, 510 (1982).

Finally, even if a petitioner has exhausted a claim, the district court may still be barred from considering the claim if the petitioner failed to raise the claim in the state's highest court in a timely fashion or in the manner prescribed by the state's procedural laws. See O'Sullivan v. Boerckel, 526 U.S. 838, 848 (1999); Thomas v. McCaughey, 201 F.3d 995, 1000 (7th Cir. 2000)

B. The Petition

The petitioner raises one ground for relief: that the State of Wisconsin presented insufficient evidence to prove the petitioner guilty of second-degree reckless homicide as party to a crime. Dkt. No. 1 at 14. The petitioner argues that none of the evidence the state presented at trial sufficiently proves beyond a reasonable doubt that he committed the charged offense. Id. at 14-15. A claim of insufficiency of the evidence can amount to a violation of a defendant's due process right under the Fourteenth Amendment. See Jackson v. Virginia, 443 U.S. 307, 324 (1979) (holding that "applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt").

The petitioner has stated a claim and it appears that he filed it within the one-year limitations period and that he has exhausted his remedies. At this stage, the court cannot say that it plainly appears from the face of the petition that the petitioner is not entitled to relief on the alleged ground for relief.

### **III. Conclusion**

The court **ORDERS** that the petitioner may proceed on the claims in his *habeas* petition.

The court **ORDERS** that within sixty days of the date of this order, the respondent shall answer or otherwise respond to the petition, complying with Rule 5 of the Rules Governing §2254 Cases, and showing cause, if any, why the writ should not issue.

The court **ORDERS** that the parties must comply with the following schedule for filing briefs on the merits of the petitioner's claims:

- (1) the petitioner has forty-five days after the respondent files his answer to file a brief in support of his petition;
- (2) the respondent has forty-five days after the petitioner files his initial brief to file the respondent's brief in opposition; and
- (3) the petitioner has thirty days after the respondent files his opposition brief to file a reply brief, if the petitioner chooses to file such a brief.

If, instead of filing an answer, the respondent files a dispositive motion, the respondent must include a brief and other relevant materials in support of the motion. The petitioner then must file a brief in opposition to that motion within forty-five days of the date the respondent files the motion. If the respondent chooses to file a reply brief, he must do so within thirty days of the date the petitioner files the opposition brief.

The parties must submit their pleadings in time for the court to *receive* them by the deadlines stated above.

Under Civil Local Rule 7(f), briefs in support of or in opposition to the *habeas* petition and any dispositive motions shall not exceed thirty pages and reply briefs may not exceed fifteen pages, not counting any statements of facts,

exhibits and affidavits. The court asks the parties to double-space any typed documents.

Under the Memorandum of Understanding entered into between the Wisconsin Department of Justice (DOJ) and the U.S. District Clerk of Court for the Eastern District of Wisconsin, the court will notify the DOJ (through the Criminal Appeals Unit Director and lead secretary) of this order via Notice of Electronic Filing (NEF). The DOJ will inform the court within twenty-one days from the date of the NEF whether it will accept service on behalf of the respondent (and, if not, the reason for not accepting service and the last known address of the respondent). The DOJ will provide the pleadings to the respondent on whose behalf it has agreed to accept service of process.

Dated in Milwaukee, Wisconsin this 17th day of January, 2019.

**BY THE COURT:**



**HON. PAMELA PEPPER**  
**United States District Judge**